

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 142 of 1997

with

CIVIL APPLICATION NO. 3287 OF 1997

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

WINDMAC MACHINERY PVT.LTD

Versus

DGP WINDOOR INDIA LTD

Appearance:

MR SN SOPARKAR for Petitioner

MR MIHIR H JOSHI for Respondent No. 1

CORAM : MR.JUSTICE S.D.DAVE

Date of decision: 03/04/97

ORAL JUDGEMENT

Upon hearing learned Counsel Mr.Soparkar for the appellant and learned Counsel Mr. Mihir Joshi for the respondent, it appears that, the present Appeal From Order requires a partial recognition and the same

requires to be partly allowed, but the matter requires to be transmitted to the Court below, with certain observations.

The appellants are the original defendants, while the respondent is the original plaintiff. The respondent-plaintiff had supplied certain machine to the appellant-defendants. The payment was not made and, therefore, the respondent-plaintiff has gone to the City Court, Ahmedabad, asking for a decree for money. At the time of institution of the Suit, the Notice of Motion has been taken out by way of Application at Exh.5 and ultimately, the Court below, has granted the ex parte ad interim orders in terms of para 11(a). The prayer at para 11(a) runs thus:

"The defendants, their Engineers, employees and Servants may be restrained by an order of injunction of this Honourable Court from using, utilizing and taking any production with the help of the WINDSOR MAKE MULTILAYER BLOWN FILM PLANT MODEL TFAT 1250 with AUTOMATIC WINDER M/c. SR.No. WV/T2/ K35 together with all its accessories and parts supplied by the Plaintiff, lying at the factory premises of defendants; at B-1 MIDC WALUJ AURANGABAD - 431136."

The relief in terms of para 11(c) also has been granted. Any how, learned Counsel Mr.Soparkar says that his client had not felt aggrieved by the above said orders and, therefore, I have nothing to do with the said part of the orders.

So far as the relief in terms of para 11(a) is concerned, it requires to be said that, that part of the order under appeal requires to be quashed and set aside and the matter requires to be remanded to the Court below with the direction to hear the Notice of Motion Application at Exh.5 and decide the same after affording a reasonable opportunity of being heard to both the sides. It would be appropriate if this is done within a period of four weeks hereof. By way of ad-interim arrangement at the time of admission, I have said that, the machinery in question should not be removed or transported out of the premises. I would say that this condition would prevail till the Notice of Motion Application at Exh.5 is decided by the Court below.

I have not expressed any opinion regarding the merits of the contentions and the counter-contentions of

the parties. The whole case regarding both the reliefs or any one of them shall have to be considered and decided by the Court below, without in any way being influenced by the present orders.

The Appeal From Order stands allowed in part to the above said extent, with no order as to costs.

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